

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

United States Securities and Exchange  
Commission,

Plaintiff,

v.

EquityBuild, Inc., EquityBuild Finance, LLC,  
Jerome H. Cohen, and Shaun D. Cohen,

Defendants.

No.: 18-cv-5587  
Honorable Manish S. Shah  
Magistrate Judge Young B. Kim

**FEDERAL HOUSING FINANCE AGENCY’S JOINDER OF INSTITUTIONAL  
LENDERS’ RULE 72 OBJECTION  
TO MAGISTRATE JUDGE KIM’S ORAL RULING AND MINUTE ORDER  
GRANTING RECEIVER’S FIRST FEE ALLOCATION MOTION [DKT. 1381]**

The Federal Housing Finance Agency (“FHFA”), as Conservator for the Federal National Mortgage Association (“Fannie Mae”) and Federal Home Loan Mortgage Corporation (“Freddie Mac”) (together, “the Enterprises”), respectfully joins the Institutional Lenders’ Rule 72 objection to Magistrate Judge Kim’s Oral Ruling and February 10, 2023, Minute Order Granting Receiver’s Motion for Allocation of Fees (“Order”), Dkt. 1381, to the extent the Order permits allocation of fees to funds controlled by this Court relating to the Receiver’s (“Duff”) sale of 1131-41 East 79th Place or 7024-32 South Paxton Avenue (together, the “Enterprise Properties”). Institutional Lenders’ Objection Dkt. No. 1389.

Previously, FHFA objected to any allocation of fees to the Enterprise Properties because doing so would dissipate the Enterprises’ collateral and thereby impair FHFA’s statutory powers to collect on the obligations secured by the properties and to preserve and conserve the Enterprises’ assets; an outcome explicitly precluded by federal law. Dkt. 1209; *see also* 12 U.S.C. §§ 4617(f), 4617(b)(2), 4617(j)(3). Magistrate Judge Kim heard FHFA’s objections and overruled them. Dkt. 1258. FHFA timely objected to Magistrate Judge Kim’s decision, and on October 17, 2022, this

Court issued an oral ruling, affirming the magistrate judge's order, albeit on slightly different grounds. Dkts. 1266, 1325, 1327. FHFA's appeal of the Court's oral ruling is still pending before the Seventh Circuit.

To eliminate any potential waiver or preservation issues regarding this present Order, Dkt.1381, FHFA respectfully incorporates and reiterates those objections in their entirety herein.

In addition, FHFA's joinder of the Institutional Lenders' objection is supported by counsel for Duff's statements during the February 8 hearing that:

- Several of Duff's proposed allocations of fees and costs to specific properties included errors;
- Duff will correct the errors, which requires recalculating *all allocations*; and;
- Because "there's both time and cost expense associated with [doing so]," Duff "*wanted to be sure that we had [identified] everything that needed to get corrected done before we go ahead and rerun [the calculations].*"

Dkt. 1387, Hearing Tr. at 95:25-96:20 (emphasis added). Allocating Duff's fees to certain receivership properties will exhaust all funds corresponding to those properties, and therefore assumes that all allocations up to now have been done properly. FHFA maintains its position that any allocation of fees to the Enterprise Properties violates federal law, and therefore the fee allocations corresponding to settled properties will have been computed incorrectly, with no holdback available to rectify the error.

FHFA joins the Institutional Lenders' objection to Magistrate Judge Kim's Oral Ruling and February 10, 2023, Minute Order to the extent its permits allocation of fees and costs to the Enterprise Properties, as such allocation is precluded by federal law. FHFA's joinder is without waiver of any of FHFA's objections under the Housing and Economic Recovery Act of 2008 ("HERA") and, to the extent there is any conflict between the Institutional Lenders' objection and HERA, FHFA stands on HERA.

Dated: February 24, 2023

Respectfully submitted,

/s/ Michael A.F. Johnson

Michael A.F. Johnson

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2023, I caused the foregoing **JOINDER OF INSTITUTIONAL LENDERS' RULE 72 OBJECTION TO MAGISTRATE JUDGE KIM'S ORAL RULING AND MINUTE ORDER GRANTING RECEIVER'S MOTION FOR ALLOCATION OF FEES [DKT. 1381]** to be electronically filed with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification of such filing to all parties of record.

/s/ Daniel E. Raymond